

AMENDED IN SENATE MARCH 20, 2017

**SENATE BILL**

**No. 349**

---

**Introduced by Senator Lara**

February 14, 2017

---

An act to amend Sections 1226 and 1228 of, to add Sections 1226.4, 1240.1, and 1266.2 to, and to repeal and add the heading of Article 5 (commencing with Section 1240) of Chapter 1 of Division 2 of, the Health and Safety Code, relating to clinics.

LEGISLATIVE COUNSEL'S DIGEST

SB 349, as amended, Lara. Chronic dialysis clinics: staffing requirements.

Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, the licensure and regulation of chronic dialysis clinics. Existing law requires the department to adopt regulations to implement these provisions, and requires those regulations to prescribe, among other things, minimum standards for staffing with duly qualified personnel. Violation of these provisions is a crime.

This bill would establish minimum staffing requirements for chronic dialysis clinics and establish a minimum transition time between patients receiving dialysis services at a treatment station. The bill would require chronic dialysis clinics to maintain certain information relating to the minimum staffing and minimum transition time requirements and provide that information, certified by the medical director and the chief executive officer or administrator under penalty of perjury, to the department on a schedule and in a format specified by the department, but no less frequently than 4 times per year. The bill would establish a schedule of penalties and actions to be taken for failing to comply with

the minimum staffing and minimum transition time requirements, including, among other things, the imposition of civil fines and the requirement that a chronic dialysis clinic submit a correction action plan. ~~The bill would also establish a private right of action to enforce the minimum staffing and minimum transition time requirements.~~ Because failure to comply with the minimum staffing and minimum transition time requirements would be a crime, and by expanding the crime of perjury, this bill would impose a state-mandated local program.

Existing law requires every clinic for which a license or special permit has been issued to be periodically inspected, with the frequency to be determined based on the type and complexity of the clinic or special service to be inspected. Existing law makes this provision inapplicable to an end stage renal disease facility.

This bill would delete that exception and require the department to conduct an inspection of a chronic dialysis clinic at least once per year and as often as necessary to, among other things, ensure compliance with the minimum staffing and minimum transition time requirements and ensure the adequacy of care being provided.

The bill would require the department to issue regulations necessary to implement the bill no later than 180 days following its effective date.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Dialysis is a critical, life-saving treatment for Californians
- 4 suffering from end-stage renal disease.

1 (b) There are currently ~~over 50,000~~ *more than 63,000* dialysis  
2 patients, and ~~almost 500~~ 562 licensed outpatient dialysis clinics,  
3 in California.

4 (c) There is broad consensus among medical professionals,  
5 academics, and other experts that higher ratios of direct caregiving  
6 staff to patients at outpatient dialysis clinics improve patient  
7 outcomes, including by reducing the rate at which patients suffer  
8 infections or must be hospitalized.

9 (d) There is also broad consensus among medical professionals,  
10 academics, and other experts that adequate time to prepare a  
11 treatment station for a patient to be dialyzed is necessary to ensure  
12 safety and hygiene protocols are followed, and directly improve  
13 patient outcomes, including by reducing the rate at which patients  
14 suffer infections or must be unnecessarily hospitalized.

15 (e) Worker safety is also enhanced by higher ratios of caregiving  
16 staff to patients and transition time between patients, including by  
17 reducing the risk of injury on the job.

18 (f) Current staffing levels in outpatient dialysis clinics in  
19 California are inadequate to protect patient health and worker  
20 safety, and therefore are presently causing harm to dialysis patients,  
21 including unnecessary and avoidable deaths, hospitalizations,  
22 infections, and medication errors.

23 (g) Other states mandate minimum direct care staffing  
24 requirements in order to enhance patient safety and health at  
25 outpatient dialysis clinics.

26 SEC. 2. Section 1226 of the Health and Safety Code is amended  
27 to read:

28 1226. (a) The regulations shall prescribe the kinds of services  
29 which may be provided by clinics in each category of licensure  
30 and shall prescribe minimum standards of adequacy, safety, and  
31 sanitation of the physical plant and equipment, and, subject to  
32 Section 1226.4, minimum standards for staffing with duly qualified  
33 personnel and minimum standards for providing the services  
34 offered. These minimum standards shall be based on the type of  
35 facility, the needs of the patients served, and the types and levels  
36 of services provided.

37 (b) The Office of Statewide Health Planning and Development,  
38 in consultation with the Community Clinics Advisory Committee,  
39 shall prescribe minimum construction standards of adequacy and

1 safety for the physical plant of clinics as found in the California  
2 Building Standards Code.

3 (c) (1) A city or county, as applicable, shall have plan review  
4 and building inspection responsibilities for the construction or  
5 alteration of buildings described in ~~paragraph (1) and paragraph~~  
6 *paragraphs (1) and* (2) of subdivision (b) of Section 1204 and  
7 shall apply the provisions of the latest edition of the California  
8 Building Standards Code in conducting these plan review  
9 responsibilities. For these buildings, construction and alteration  
10 shall include conversion of a building to a purpose specified in  
11 paragraphs (1) and (2) of subdivision (b) of Section 1204.

12 (2) Upon the initial submittal to a city or county by the  
13 governing authority or owner of these clinics for plan review and  
14 building inspection services, the city or county shall reply in  
15 writing to the clinic whether or not the plan review by the city or  
16 county will include a certification as to whether or not the clinic  
17 project submitted for plan review meets the standards as  
18 propounded by the office in the California Building Standards  
19 Code.

20 (3) If the city or county indicates that its review will include  
21 this certification it shall do both of the following:

22 (A) Apply the applicable clinic provisions of the latest edition  
23 of the California Building Standards Code.

24 (B) Certify in writing, to the applicant within 30 days of  
25 completion of construction whether or not these standards have  
26 been met.

27 (d) If upon initial submittal, the city or county indicates that its  
28 plan review will not include this certification, the governing  
29 authority or owner of the clinic shall submit the plans to the Office  
30 of Statewide Health Planning and Development who shall review  
31 the plans for certification whether or not the clinic project meets  
32 the standards, as propounded by the office in *the* California  
33 Building Standards Code.

34 (e) When the office performs review for certification, the office  
35 shall charge a fee in an amount that does not exceed its actual  
36 costs.

37 (f) The office of the State Fire Marshal shall prescribe minimum  
38 safety standards for fire and life safety in surgical clinics.

39 (g) Notwithstanding subdivision (c), the governing authority or  
40 owner of a clinic may request the office to perform plan review

1 services for buildings described in subdivision (c). If the office  
2 agrees to perform these services, after consultation with the local  
3 building official, the office shall charge an amount not to exceed  
4 its actual costs. The construction or alteration of these buildings  
5 shall conform to the applicable provisions of the latest edition of  
6 the California Building Standards Code for purposes of the plan  
7 review by the office pursuant to this subdivision.

8 (h) Regulations adopted pursuant to this chapter establishing  
9 standards for laboratory services shall not be applicable to any  
10 clinic that operates a clinical laboratory licensed pursuant to  
11 Section 1265 of the Business and Professions Code.

12 SEC. 3. Section 1226.4 is added to the Health and Safety Code,  
13 to read:

14 1226.4. (a) For purposes of this ~~section~~ *section*, the following  
15 terms have the following meanings:

16 (1) “At all times” includes times during which employees,  
17 including, but not limited to, nurses and technicians, are provided  
18 meal periods and rest or other breaks.

19 (2) “Charge nurse” means a charge nurse as described in Section  
20 494.140(b)(3) of Title 42 of the Code of Federal Regulations as it  
21 read on December 31, 2016.

22 (3) “Direct care” means initiating and discontinuing dialysis,  
23 monitoring patients during treatment, and administering  
24 medications, and physical presence in the immediate area where  
25 patients are dialyzed.

26 (4) “Nurse” means a registered nurse licensed pursuant to  
27 Chapter 6 (commencing with Section 2700) of Division 2 of the  
28 Business and Professions Code.

29 (5) “Nurse manager” means a nurse manager as described in  
30 Section 494.140(b)(1) of Title 42 of the Code of Federal  
31 Regulations as it read on December 31, 2016.

32 (6) “Social worker” means a social worker as described in  
33 Section 494.140(d) of Title 42 of the Code of Federal Regulations  
34 as it read on December 31, 2016.

35 (7) “Technician” means a person who holds both of the  
36 following qualifications:

37 (A) The person is a patient care dialysis technician, as described  
38 in Section 494.140(e) of Title 42 of the Code of Federal  
39 Regulations as it read on December 31, 2016.

1 (B) The person is a Certified Hemodialysis Technician certified  
2 pursuant to Article 3.5 (commencing with Section 1247) of Chapter  
3 3 of Division 2 of the Business and Professions Code.

4 (8) “Trainee” means a person who is undergoing training to  
5 become a technician, but who has not yet been certified as a  
6 Certified Hemodialysis Technician pursuant to Article 3.5  
7 (commencing with Section 1247) of Chapter 3 of Division 2 of  
8 the Business and Professions Code.

9 (9) “Transition time” means the period of time beginning when  
10 one patient leaves a treatment station and ending when the next  
11 patient is placed in the treatment station, but does not mean the  
12 period of time after the last patient of the day leaves the treatment  
13 station.

14 (10) “Treatment station” means a physical location within a  
15 chronic dialysis clinic where an individual patient is dialyzed.

16 (b) (1) Commencing July 1, 2018, a chronic dialysis clinic shall  
17 ensure that the following minimum staffing ratios are met at all  
18 times that patients are receiving, or preparing to receive, direct  
19 care:

20 (A) At least one nurse is providing direct care for every eight  
21 patients. A nurse shall only count toward this ratio during time  
22 periods the nurse has no responsibilities other than direct care. A  
23 nurse manager or charge nurse shall not count toward this ratio.

24 (B) At least one technician is providing direct care for every  
25 three patients. A technician shall only count toward this ratio during  
26 time periods the technician has no responsibilities other than direct  
27 care. Trainees shall not count toward this ratio. Nurses counted  
28 toward the nurse-to-patient ratio shall not count toward this ratio.

29 (2) Commencing July 1, 2018, a chronic dialysis clinic shall  
30 ensure that a social worker is not assigned more than 75 patients.

31 (3) The ratios described in paragraphs (1) and (2) shall constitute  
32 the minimum number of nurses, technicians, and social workers  
33 assigned to patients at all times. Additional nurses, technicians,  
34 and social workers shall be assigned to the extent necessary to  
35 ensure that an adequate number of qualified personnel are present  
36 whenever patients are undergoing dialysis so that the  
37 patient-to-staff ratio is appropriate to the level of dialysis care  
38 given and meets the needs of patients.

39 (4) Commencing July 1, 2018, a chronic dialysis clinic shall  
40 ensure that the transition time is at least 45 minutes.

1 (c) The department shall not issue a license to any chronic  
2 dialysis clinic unless that chronic dialysis clinic demonstrates the  
3 ability and intention to comply with this section.

4 (d) (1) Every chronic dialysis clinic for which a license has  
5 been issued shall maintain, and provide to the department on a  
6 form prescribed by the department, at a minimum, the following  
7 information:

8 (A) Actual staffing ratio and transition time data for the period  
9 covered by the submission, which shall include, at a minimum,  
10 daily totals of the total number and actual hours worked by nurses,  
11 technicians, and social workers, the total number of patients and  
12 actual hours receiving direct care, and the daily average transition  
13 time for each treatment station.

14 (B) Every instance, no matter how brief, during the period  
15 covered by the submission when staffing ratios or transition times  
16 did not meet the requirements of subdivision (b) and the reasons  
17 and circumstances therefor.

18 (2) The medical director and the chief executive officer or  
19 administrator of the chronic dialysis clinic shall both personally  
20 certify under penalty of perjury that each of them is satisfied, after  
21 review, that all information submitted pursuant to paragraph (1)  
22 is accurate and complete.

23 (3) The chronic dialysis clinic shall periodically submit the  
24 information described in paragraph (1) to the department on a  
25 schedule and in a format prescribed by the department, provided  
26 that the clinic shall submit that information no less frequently than  
27 four times per year.

28 (e) The department shall inspect each chronic dialysis clinic for  
29 which a license has been issued at least once per year, and shall  
30 conduct such inspections as often as necessary to ensure  
31 compliance with the requirements of subdivision (b), the accuracy  
32 and completeness of information provided pursuant to subdivision  
33 (d), compliance with corrective action plans, if any, approved  
34 under subdivision (b) or (d) of Section 1240.1, and the adequacy  
35 of the quality of care being provided.

36 (f) Within 60 days of receiving a complaint from an employee,  
37 an association of employees, a vendor, a contractor, a patient, an  
38 association of patients, or a family member of a patient of a chronic  
39 dialysis clinic that the chronic dialysis clinic has engaged in a  
40 staffing-related violation or gross staffing-related violation, as

1 those terms are defined in subdivision (a) of Section 1240.1, the  
2 department shall investigate the chronic dialysis clinic and, if the  
3 evidence shows a violation has occurred, the department shall  
4 impose discipline pursuant to Section 1240.1.

5 (g) (1) Any writing, record, or document received, owned, used,  
6 or retained by the department in connection with subdivisions (c),  
7 (d), and ~~(e)~~; *(e) of this section*, and subdivisions (b) to (f), inclusive,  
8 of Section 1240.1, is a public record within the meaning of  
9 subdivision (e) of Section 6252 of the Government Code, and, as  
10 such, is open to public inspection pursuant to the California Public  
11 Records Act (Chapter 3.5 (commencing with Section 6250) of  
12 Division 7 of Title 1 of the Government Code). However, the name  
13 and other identifying or confidential information of a person that  
14 is contained in those records, except the names of duly authorized  
15 officers, employees, or agents of the department conducting an  
16 investigation or inspection in response to a complaint filed pursuant  
17 to subdivision (f), shall be redacted from copies of those records  
18 that are made available for public inspection.

19 (2) The department shall redact from any writing, record, or  
20 document described in this subdivision personal identifying  
21 information associated with named individuals to the extent  
22 required to prevent an unwarranted invasion of personal privacy,  
23 as that term is used in subdivision (c) of Section 6254, but the  
24 department shall not withhold any such writing, record, or  
25 document in its entirety under subdivision (c) of Section 6254.

26 (3) Information required to be submitted under subdivision (d),  
27 and complaints submitted under subdivision (f), shall not be  
28 withheld on the basis of subdivision (f) of Section 6254 of the  
29 Government Code.

30 SEC. 4. Section 1228 of the Health and Safety Code is amended  
31 to read:

32 1228. (a) Except as provided in subdivision (c), every clinic  
33 for which a license or special permit has been issued shall be  
34 periodically inspected. Except as provided in Section 1226.4, the  
35 frequency of inspections shall depend upon the type and complexity  
36 of the clinic or special service to be inspected. Inspections shall  
37 be conducted no less often than once every three years and as often  
38 as necessary to ensure the quality of care being provided.

39 (b) (1) During inspections, representatives of the department  
40 shall offer any advice and assistance to the clinic as they deem



1 appropriate. The department may contract with local health  
2 departments for the assumption of any of the department's  
3 responsibilities under this chapter. In exercising this authority, the  
4 local health department shall conform to the requirements of this  
5 chapter and to the rules, regulations, and standards of the  
6 department.

7 (2) The department shall reimburse local health departments  
8 for services performed pursuant to this section, and these payments  
9 shall not exceed actual cost. Reports of each inspection shall be  
10 prepared by the representative conducting it upon forms prepared  
11 and furnished by the department and filed with the department.

12 (c) This section shall not apply to any of the following:

13 (1) A rural health clinic.

14 (2) A primary care clinic accredited by the Joint Commission  
15 on Accreditation of Healthcare Organizations (JCAHO), the  
16 Accreditation Association for Ambulatory Health Care (AAAHHC),  
17 or any other accrediting organization recognized by the department.

18 (3) An ambulatory surgical center.

19 (4) A comprehensive outpatient rehabilitation facility that is  
20 certified to participate either in the Medicare Program under Title  
21 XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security  
22 Act, or the Medicaid program under Title XIX (42 U.S.C. Sec.  
23 1396 et seq.) of the federal Social Security Act, or both.

24 (d) Notwithstanding paragraph (2) of subdivision (c), the  
25 department shall retain the authority to inspect a primary care clinic  
26 pursuant to Section 1227, or as necessary to ensure the quality of  
27 care being provided.

28 SEC. 5. The heading of Article 5 (commencing with Section  
29 1240) of Chapter 1 of Division 2 of the Health and Safety Code  
30 is repealed.

31 SEC. 6. The heading of Article 5 (commencing with Section  
32 1240) is added to Chapter 1 of Division 2 of the Health and Safety  
33 Code, to read:

34  
35 Article 5. Suspension, Revocation, and Penalties  
36

37 SEC. 7. Section 1240.1 is added to the Health and Safety Code,  
38 to read:

39 1240.1. (a) For purposes of this section, the following terms  
40 have the following meanings:

1 (1) “Staffing-related violation” means any of the following:

2 (A) Violation by the chronic dialysis clinic, or any of its officers,  
3 employees, vendors, or ~~contractors~~ *contractors*, of Section 1226.4.

4 (B) Conduct by the chronic dialysis clinic, or any of its officers,  
5 employees, vendors, or ~~contractors~~ *contractors*, intended to conceal  
6 a violation of Section 1226.4.

7 (C) A misrepresentation of information provided to the  
8 department pursuant to this section or subdivision ~~(e)~~ *(d)* of Section  
9 1226.4.

10 (D) Violation by the chronic dialysis clinic, or any of its officers,  
11 employees, vendors, or contractors, of any part of a corrective  
12 action plan described in subdivision (b) or (d).

13 (E) Other violations that the department has defined in  
14 regulation.

15 (2) “Gross staffing-related violation” means any of the  
16 following:

17 (A) A staffing-related violation that causes or exacerbates harm  
18 to a patient, or that has a substantial possibility of causing or  
19 exacerbating harm to a patient.

20 (B) A willful or intentional staffing-related violation.

21 (C) Reckless disregard of a substantial likelihood of a  
22 staffing-related violation.

23 (D) A continuous period of one hour or longer in which the  
24 staffing ratio is at or above one nurse providing direct care for nine  
25 or more patients, or one technician providing direct care for four  
26 or more patients. For purposes of this subparagraph, the terms  
27 “nurse” and “technician” shall have the same meanings as in  
28 Section 1226.4.

29 (E) A continuous period of one week or longer in which the  
30 staffing ratio is at or above one social worker assigned to 90 or  
31 more patients. For purposes of this subparagraph, “social worker”  
32 has the same meaning as in Section 1226.4.

33 (F) A daily average transition time for a treatment station that  
34 is 20 minutes or shorter.

35 (G) Other violations that the department has defined in  
36 regulation.

37 (3) “Governing entity” means a person, firm, association,  
38 partnership, corporation, or other entity that owns or operates a  
39 chronic dialysis clinic for which a license has been issued, without

1 respect to whether the person or entity itself directly holds that  
2 license.

3 (4) “Responsible individual” ~~means any of the following:~~

4 ~~(A) A person in a position of authority within a chronic dialysis~~  
5 ~~clinic means a person described in subparagraph (A) or (B) who,~~  
6 with respect to a staffing-related violation or gross staffing-related  
7 violation, knew or should have known of the substantial likelihood  
8 that the violation could occur and possessed, but failed to exercise,  
9 authority to prevent the violation from occurring, or knew or should  
10 have known that the violation had occurred and possessed, but  
11 failed to exercise, authority to substantially remedy the violation.

12 ~~(B)~~

13 (A) A member of the governing body, designated person, chief  
14 executive officer, administrator, and medical director, as those  
15 terms are used in Section 494.180 of Title 42 of the Code of Federal  
16 Regulations as it read on December 31, 2016.

17 ~~(C)~~

18 (B) Managerial employees, officers, or directors of the governing  
19 entity, and persons who provide services under contract to that  
20 governing entity.

21 (b) The department shall impose the following civil penalties  
22 on a chronic dialysis clinic for a staffing-related violation ~~and~~ in  
23 the manner provided in this chapter. Action taken under this  
24 subdivision shall be in addition to the actions required or authorized  
25 under subdivisions (c) and (d).

26 (1) For the first staffing-related violation in any 12-month  
27 period:

28 (A) The department shall impose a civil penalty on the chronic  
29 dialysis clinic of not less than five hundred dollars (\$500) and not  
30 more than two thousand five hundred dollars (\$2,500).

31 (B) The department shall impose a civil penalty on each  
32 responsible ~~individual~~ individual, if any, of not less than one  
33 hundred dollars (\$100) and not more than one thousand dollars  
34 (\$1,000).

35 (C) The chronic dialysis clinic shall submit a corrective action  
36 plan to the department describing how the chronic dialysis clinic  
37 will avoid committing any further staffing-related violations. The  
38 corrective action plan shall be revised and approved by the  
39 department.

1 (2) For the second staffing-related violation in any 12-month  
2 period:

3 (A) The department shall impose a civil penalty on the chronic  
4 dialysis clinic of not less than one thousand dollars (\$1,000) and  
5 not more than five thousand dollars (\$5,000).

6 (B) The department shall impose a civil penalty on each  
7 responsible ~~individual~~ *individual, if any*, of not less than one  
8 hundred dollars (\$100) and not more than two thousand dollars  
9 (\$2,000).

10 (C) The chronic dialysis clinic shall submit a corrective action  
11 plan to the department describing how the chronic dialysis clinic  
12 will avoid committing any further staffing-related violations. The  
13 corrective action plan shall be revised and approved by the  
14 department.

15 (3) For the third staffing-related violation in any 12-month  
16 period:

17 (A) The department shall impose a civil penalty on the chronic  
18 dialysis clinic of not less than two thousand dollars (\$2,000) and  
19 not more than seven thousand five hundred dollars (\$7,500).

20 (B) The department shall impose a civil penalty on each  
21 responsible ~~individual~~ *individual, if any*, of not less than two  
22 hundred dollars (\$200) and not more than three thousand dollars  
23 (\$3,000).

24 (C) The chronic dialysis clinic shall submit a corrective action  
25 plan to the department describing how the chronic dialysis clinic  
26 will avoid committing any further staffing-related violations. The  
27 corrective action plan shall be revised and approved by the  
28 department.

29 (4) For the fourth staffing-related violation in any 12-month  
30 period:

31 (A) The department shall impose a civil penalty on the chronic  
32 dialysis clinic of not less than three thousand dollars (\$3,000) and  
33 not more than ten thousand dollars (\$10,000).

34 (B) The department shall impose a civil penalty on each  
35 responsible ~~individual~~ *individual, if any*, of not less than two  
36 hundred dollars (\$200) and not more than four thousand dollars  
37 (\$4,000).

38 (C) The chronic dialysis clinic shall submit a corrective action  
39 plan to the department describing how the chronic dialysis clinic  
40 will avoid committing any further staffing-related violations. The

1 corrective action plan shall be revised and approved by the  
2 department.

3 (5) For the fifth staffing-related violation in any 12-month  
4 period:

5 (A) The department shall impose a civil penalty on the chronic  
6 dialysis clinic of not less than four thousand dollars (\$4,000) and  
7 not more than twelve thousand five hundred dollars (\$12,500).

8 (B) The department shall impose a civil penalty on each  
9 responsible ~~individual~~ *individual, if any*, of not less than three  
10 hundred dollars (\$300) and not more than five thousand dollars  
11 (\$5,000).

12 (C) The chronic dialysis clinic shall submit a corrective action  
13 plan to the department describing how the chronic dialysis clinic  
14 will avoid committing any further staffing-related violations. The  
15 corrective action plan shall be revised and approved by the  
16 department.

17 (6) For the sixth and each subsequent staffing-related violation  
18 in any 12-month period:

19 (A) The department shall impose a civil penalty on the chronic  
20 dialysis clinic of not less than five thousand dollars (\$5,000) and  
21 not more than twenty-five thousand dollars (\$25,000).

22 (B) The department shall impose a civil penalty on each  
23 responsible ~~individual~~ *individual, if any*, of not less than three  
24 hundred dollars (\$300) and not more than six thousand dollars  
25 (\$6,000).

26 (C) The chronic dialysis clinic shall submit a corrective action  
27 plan to the department describing how the chronic dialysis clinic  
28 will avoid committing any further staffing-related violations. The  
29 corrective action plan shall be revised and approved by the  
30 department.

31 (c) Notwithstanding Section 1240, and subject to Section 1241,  
32 the department shall take the following action in the manner  
33 provided in this chapter. Action taken under this subdivision shall  
34 be in addition to actions required or authorized under subdivisions  
35 (b) and (d).

36 (1) For the first gross staffing-related violation in any 24-month  
37 period, the department may suspend the license issued to the  
38 chronic dialysis clinic for a period not to exceed seven days.

(2) For the second gross staffing-related violation in any 24-month period, the department shall suspend the license issued to the chronic dialysis clinic for a period not to exceed seven days.

(3) For the third gross staffing-related violation in any 24-month period, the department shall suspend the license issued to the chronic dialysis clinic for a period not to exceed 30 days.

(4) For the fourth gross staffing-related violation in any 24-month period, the department shall suspend the license issued to the chronic dialysis clinic for a period not to exceed 90 days.

(5) For the fifth gross staffing-related violation in any 24-month period:

(A) The department may revoke the license issued to the chronic dialysis clinic or, if the department does not revoke the license, the department shall suspend the license for a period not to exceed 180 days.

(B) For a period not to exceed 180 days, the department may refuse to issue or renew a license, and may refuse to authorize a transfer of an existing license, with respect to a chronic dialysis clinic owned or operated by the same, or an affiliated, governing entity of the chronic dialysis clinic at which the gross staffing-related violation occurred.

(6) For the sixth and each subsequent gross staffing-related violation in any 24-month period:

(A) The department may revoke the license issued to the chronic dialysis clinic or, if the department does not revoke the license, the department shall suspend the license for a period not to exceed one year.

(B) For a period not to exceed three years, the department may refuse to issue or renew a license, and may refuse to authorize a transfer of an existing license, with respect to a chronic dialysis clinic owned or operated by the same, or an affiliated, governing entity of the chronic dialysis clinic at which the gross staffing-related violation occurred.

(d) Notwithstanding Section 1240, and subject to Section 1241, the department shall take the following action with respect to a governing entity in the manner provided in this chapter. Action taken under this subdivision shall be in addition to action required or authorized under subdivisions (b) and (c).

(1) Except as provided in paragraph (2), when chronic dialysis clinics owned or operated by a governing entity or affiliated

governing entities commit, in the aggregate, 25 or more gross staffing-related violations within any 24-month period:

(A) The governing entity or governing entities shall submit a corrective action plan to the department describing affirmative steps the governing entity or governing entities and associated chronic dialysis clinics will take to prevent every chronic dialysis clinic owned or operated by the governing entity or governing entities from committing any further gross staffing-related violations. The corrective action plan shall be revised and approved by the department.

(B) The department ~~shall~~ *may* refuse to issue or renew a license, and ~~shall~~ *may* refuse to authorize a transfer of an existing license, to the governing entity or governing entities or a chronic dialysis clinic owned or operated by the governing entity or governing entities, for a period that ends on or before the later of either:

(i) Three years after the latest gross staffing-related violation occurred.

(ii) The date on which the department is satisfied that the governing entity or governing entities and associated chronic dialysis clinics have taken all affirmative steps set forth in the corrective action plan submitted under subparagraph (A).

(2) When chronic dialysis clinics owned or operated by a governing entity or affiliated governing entities commit, in the aggregate, 50 or more gross staffing-related violations within any 24-month period:

(A) The governing entity or governing entities shall submit a corrective action plan to the department describing affirmative steps the governing entity or governing entities and associated chronic dialysis clinics will take to prevent every chronic dialysis clinic owned or operated by the governing entity or governing entities from committing any further gross staffing-related violations of any kind. The corrective action plan shall be revised and approved by the department.

(B) The department may revoke or suspend licenses issued to the governing entity or governing entities or any chronic dialysis clinic that they own or operate, and may refuse to issue, renew, or authorize a transfer of, a license to the governing entity or governing entities or any chronic dialysis clinic owned or operated by the governing entity or governing entities.

(e) (1) The department shall consider the factors described in paragraph (2) for all of the following:

(A) When determining the penalties to be imposed under subdivision (b).

(B) The revisions, if any, to corrective action plans submitted under subdivision (b) or (d).

(C) The extent to which to refuse to issue or transfer, to revoke, or to suspend a license under subdivision (c) or (d).

(D) Whether to take any other action authorized under subdivision (b), (c), or (d).

(2) ~~The factors~~ the department shall consider all of the following factors ~~as when taking the actions~~ described in paragraph (1):

(A) The duration and severity of the violation.

(B) The willfulness of the violation.

(C) The history of the chronic dialysis clinic or governing entity of noncompliance with Section 1226.4, including, but not limited to, the similarity in circumstances of the violation to any previous violation within a 24-month period.

(D) The ability and good faith effort of the chronic dialysis clinic, and any responsible individual, to have foreseen or avoided the violation.

(E) The good faith effort by the chronic dialysis clinic, and any responsible individual, to remedy the violation.

(F) The harm to any patient, or exacerbation of that harm, resulting from the violation.

(G) The extent to which the chronic dialysis clinic fully and completely reported the violation pursuant to subdivision (c) of Section 1226.4.

(f) Penalties collected pursuant to this section shall be used by the department to implement and enforce Section 1226.4 and this section.

(g) For purposes of Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, the information required to be provided under subdivision (d) of Section 1226.4 shall be deemed material to any claim for payment submitted by a chronic dialysis clinic within six months of the submission of that information.

~~(h) (1) For purposes of this subdivision, the following terms have the following meanings:~~



1     (A) ~~“Enforcing plaintiff” means an employee, an association~~  
2 ~~of employees, a vendor, a contractor, a patient, an association of~~  
3 ~~patients, or a family member of a patient of a chronic dialysis~~  
4 ~~clinic.~~

5     (B) ~~“Actionable violation” means a gross staffing-related~~  
6 ~~violation that a chronic dialysis clinic did not report to the~~  
7 ~~department pursuant to subdivision (d) of Section 1226.4.~~

8     (2) ~~A civil action for an actionable violation may be brought~~  
9 ~~against a chronic dialysis clinic or a governing entity by the~~  
10 ~~Attorney General, or by an enforcing plaintiff, on behalf of the~~  
11 ~~people of the State of California, for injunctive relief, civil~~  
12 ~~penalties, and other appropriate equitable relief. A governing entity~~  
13 ~~shall be held jointly and severally liable with any chronic dialysis~~  
14 ~~clinic that the governing entity owns or operates.~~

15     (3) ~~Before filing an action under this section, an enforcing~~  
16 ~~plaintiff shall give written notice of the alleged violation and his~~  
17 ~~or her intent to bring suit to the Attorney General. If the Attorney~~  
18 ~~General commences a civil action for the same alleged violation~~  
19 ~~within 60 days of receiving the notice, a separate action by the~~  
20 ~~enforcing plaintiff shall be barred.~~

21     (4) ~~Civil penalties shall not exceed twenty-five thousand dollars~~  
22 ~~(\$25,000) for each actionable violation. The court shall determine~~  
23 ~~the civil penalty by reference to the factors enumerated in~~  
24 ~~subdivision (e).~~

25     (5) ~~Seventy-five percent of civil penalties recovered in an action~~  
26 ~~brought by an enforcing plaintiff under this section shall be~~  
27 ~~distributed to the department for the purposes described in~~  
28 ~~subdivision (f) and the remaining 25 percent shall be distributed~~  
29 ~~to the enforcing plaintiff.~~

30     (6) ~~An enforcing plaintiff who prevails in an action under this~~  
31 ~~subdivision is entitled to recover reasonable attorney’s fees and~~  
32 ~~costs. A chronic dialysis clinic that prevails in any action under~~  
33 ~~this subdivision is not entitled to recover reasonable attorney’s~~  
34 ~~fees and costs unless the defendant demonstrates that the action~~  
35 ~~was frivolous and without foundation.~~

36     (7) ~~The private right of action established under this subdivision~~  
37 ~~shall not be construed to abridge or limit any other right, claim,~~  
38 ~~or cause of action of an enforcing plaintiff.~~

39     SEC. 8. Section 1266.2 is added to the Health and Safety Code,  
40 to read:

1 1266.2. It is the intent of the Legislature that California  
2 taxpayers not be financially responsible for implementation and  
3 enforcement of minimum staffing requirements at chronic dialysis  
4 clinics. In order to effectuate that intent, when calculating,  
5 assessing, and collecting fees imposed on chronic dialysis clinics  
6 pursuant to Section 1266, the department shall take into account  
7 all costs associated with implementing and enforcing Sections  
8 1226.4 and 1240.1.

9 SEC. 9. The State Department of Public Health shall issue  
10 regulations necessary to implement this act no later than 180 days  
11 following its effective date.

12 SEC. 10. The provisions of this act are severable. If any  
13 provision of this act or its application is held invalid, that invalidity  
14 shall not affect other provisions or applications that can be given  
15 effect without the invalid provision or application.

16 SEC. 11. The Legislature finds and declares that Section 3 of  
17 this act, which adds Section 1226.4 to the Health and Safety Code,  
18 imposes a limitation on the public's right of access to the meetings  
19 of public bodies or the writings of public officials and agencies  
20 within the meaning of Section 3 of Article I of the California  
21 Constitution. Pursuant to that constitutional provision, the  
22 Legislature makes the following findings to demonstrate the interest  
23 protected by this limitation and the need for protecting that interest:

24 In order to protect the privacy of employees and patients of  
25 chronic dialysis clinics, it is necessary that their names be redacted  
26 from the writings described in subdivision (g) of Section 1226.4  
27 of the Health and Safety Code when those writings are made  
28 available to the public.

29 SEC. 12. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.